

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4428 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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JAYESH B BRAHMBHATT

Versus

MANAGING DIRECTOR, GUJ. COMMUNICATIONS &  
ELECTRONICS LIMITED, BARODA

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Appearance:

MR RK MISHRA for Petitioner  
MR NV ANJARIA for Respondent

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 09/04/97

ORAL JUDGEMENT

1. This petition is directed by the petitioner, an employee of the Gujarat Communications and Electronics Limited, against the denial of promotion to him to the post of Radio Wirer Gr. 'B' from the post of Radio Wirer Gr. 'C'.
2. The facts of the case, in brief, are that the petitioner joined the services of the respondent on

7-11-1982 on the post of Radio Wirer Gr. 'C'. He was confirmed on this post with effect from 6th May, 1983 after successful completion of the period of probation. The next post of promotion in the channel is of Radio Wirer Gr. 'B'. With effect from 1-1-1987 two of his juniors were given promotion to the post of Radio Wirer Gr. 'B'. In the seniority, what the petitioner stated is that his name stand at Sr. No.544 whereas the names of the two promotees, aforesaid, stand at Sr. No.561 and 575 respectively. The petitioner was communicated with the adverse remarks under the communication dated 26th June, 1985 for the period from 1-1-1984 to 31-12-1984 and his performance was reported to be below average in the areas of integrity, discipline, cooperation, punctuality and initiative. Except this, nothing is adverse against the petitioner what he contended in this Special Civil Application. It has further been contended that the representation filed against the aforesaid remarks has not been decided and the petitioner has been superseded in the promotion.

3. The reply to the Special Civil Application has been filed to which the affidavit-in-rejoinder has also been filed by the petitioner.

4. In the reply, the respondents have come up with a case that the petitioner's case was considered for promotion in the meeting of the Departmental Selection Committee held on 21st January, 1987 along with the persons junior to him, but on the basis of his service record he was not found fit for promotion. It has further been stated that the petitioner was personally called by the Selection Committee about his representation dated 21st May, 1987, and was explained in detail the circumstances under which he was not considered suitable for promotion. So it is not the case where he was not heard on his representation against adverse remarks. None of the members of the Selection Committee was adverse to the petitioner. It has further been stated that his performance was assessed objectively. He remained absent from 4-11-1985 to 6-11-1985 during the illegal strike. The petitioner further remained absent from 8-10-1986 to 18-10-1986 in connection with the illegal strike though he was warned not to participate in the strike. On the basis of the aforesaid record of the petitioner, the counsel for the respondent contended that the decision of the Selection Committee not to adjudge the petitioner suitable for promotion is justified.

5. I have given my thoughtful consideration to the

submissions made by the learned counsel for the parties.

6. The learned counsel for the petitioner admitted that the petitioner remained absent during the period aforesaid. In the reply affidavit, it has further been stated that the petitioner was a General Secretary of Employees' Union and he was not the person concerned with the strike. The strike call was given by the rival union, but still he remained absent. The only justification given is that this absent could not have been taken to be adverse as no departmental inquiry has been held against him and this period has been regularised. Both the parties have not produced on record any material in this respect. However, it is not the case of the petitioner that this period has been regularised, but even if we go by to accept the contention made by the learned counsel for the petitioner, the fact remains that he remained illegally absent, which is a serious misconduct. The wilful and deliberate absent is a misconduct and if the respondent has not taken any disciplinary action on this misconduct, it does not mean that this conduct of the petitioner was wiped of.

7. Taking into consideration the adverse remarks communicated to the petitioner, he was heard on his representation filed against that adverse remarks, and his two further adversities of wilful and deliberate absent from duty, I do not find it to be a case where the decision of the Selection Committee not to recommend for promotion of the petitioner is perverse or arbitrary. Moreover, the petitioner has not pleaded any malafides against any of the member of the Selection Committee.

8. Taking into consideration the totality of the facts of this case, no interference is called for in the matter. The petitioner was a General Secretary of the Employees' Union and more discipline is expected from him.

9. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted by this Court stands vacated.

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